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Mr. Steven Rimmer
Detroit Tenants Union
Via email: detroittenants@gmail.com

Re: Municipal Authority to Enact a "Right to Renew with Good Cause"

Steve:

You asked Detroit Justice Center for a legal opinion regarding the just cause portion of a proposed Right to Renew Ordinance. Specifically, you asked our opinion on the legal soundness of the City of Detroit Law Department's opinion that the City of Detroit may not lawfully enact a "Right to Renew with Good Cause" ordinance requiring landlords to provide legitimate reasons for non-renewal of residential leases, given Michigan's express statutory prohibition on local rent control and the state's comprehensive landlord-tenant regulatory framework. My answer to this question is below.

It is our legal opinion, that the Law Department's analysis, dated July 8, 2025, is legally questionable and contradicted by Michigan Supreme Court precedent. The opinion overstates field preemption, misapplies canons of statutory construction regarding legislative intent, and fails to distinguish between regulating eviction procedures versus substantive landlord obligations. Michigan courts have repeatedly held that the "mere existence of a statute does not preempt local regulation of the same subject matter" and that "parallel subject matter simply does not require a finding of preemption." *Rental Prop. Owners Ass'n v. City of Grand Rapids*, 455 Mich. 246, 270 (1997). Further, the opinion's own proposed "Relocation Assistance" provision internally contradicts its core preemption reasoning. We believe a well-drafted Right to Renew ordinance would likely survive legal challenge if properly framed under the City's Home Rule authority and police powers.

I. The Field Preemption Argument is Overstated

A. The Legal Standard for Preemption

The Law Department correctly identifies the relevant legal framework from *Ter Beek v. City of Wyoming*, 495 Mich. 1, 19-20 (2014), which states:

[T]he City... 'is precluded from enacting an ordinance if... the ordinance is in direct conflict with the state statutory scheme, or... if the state statutory scheme preempts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation.'

However, the Michigan Supreme Court has consistently applied this standard narrowly. In *Rental Property Owners Ass'n v. City of Grand Rapids*, 455 Mich. 246 (1997), the Court articulated critical limitations on preemption:

The mere existence of a statute does not preempt local regulation of the same subject matter. The enactment and enforcement of similar... goals and remedies at the local level is not precluded by the preemption doctrine. Parallel subject matter simply does not require a finding of preemption. *Id.* at 270.

This principle directly undermines the Law Department's analysis.

B. The State Regulates Procedures, Not Substantive Landlord Obligations

The Law Department conflates state regulation of *eviction procedures* with regulation of *substantive landlord-tenant obligations*. The Revised Judicature Act and Michigan Court Rules primarily govern:

- Court jurisdiction over summary proceedings (MCL 600.5704)
- Procedural mechanisms for filing and conducting eviction actions (MCR 4.201)
- Grounds for summary proceedings once a landlord seeks court intervention (MCL 600.5714)

Significantly, Michigan courts have held that housing regulations do not impermissibly interfere with district court jurisdiction. In *Javens v. Ruel McPherson & City of Hazel Park*, 1996 Mich. App. LEXIS 1695 (Mich. Ct. App. 1996), the Court of Appeals addressed a nearly identical argument. Plaintiffs challenged a municipal ordinance requiring landlord licensing as preempted by the RJA's grant of jurisdiction over summary proceedings. The court rejected this claim:

The purpose of the ordinance is not to alter the jurisdiction of the district court in landlord/tenant proceedings, but to ensure proper maintenance and prevent deterioration of housing units. The ordinance does not address the power of the district court; it merely states that landlords must have a landlord license to be entitled to payment of rent or to evict tenants. The state is not seeking to regulate this area through the Revised Judicature Act. *Id.* at *6.

A Right to Renew ordinance operates identically. It would not alter court procedures, change jurisdictional grants, or modify the standards courts apply once an eviction action is filed. It would simply create a municipal regulatory framework governing when landlords must offer renewals—a matter of contract formation and housing policy, not judicial procedure.

C. Michigan Law Permits Supplementary Local Housing Regulation

The *Javens* court further held that the Michigan Housing Law Act *expressly permits* municipalities to enact supplementary protections:

MCL 125.534(8) expressly provides that the act 'does not preempt, preclude, or interfere with the authority of a municipality to protect the health, safety, and general welfare of the public through ordinance, charter, or other means.' 1996 Mich. App. LEXIS 1695, at *7.

The court concluded: "the ordinance does not directly conflict with the state statutory scheme." *Id.* This express statutory authorization for municipal housing regulation directly contradicts the Law Department's assertion that the field has been occupied by the state.

D. Michigan Cities Routinely Regulate Landlord-Tenant Relationships

The existence of state eviction procedures has never been held to preempt local landlord-tenant regulations. Michigan municipalities routinely regulate through:

- Housing code requirements exceeding state minimums
- Rental registration and licensing ordinances
- Security deposit regulations
- Notice requirements for rent increases

The Law Department offers no explanation for why lease renewal requirements would be treated differently from these established forms of regulation.

E. Critical Analytical Gaps in the Opinion

The opinion contains notable omissions:

- No case law research: The memo cites no Michigan cases addressing whether municipalities can regulate lease renewal obligations. This is striking given the dispositive nature of the opinion and the existence of directly relevant precedent like *Grand Rapids* and *Javens*.
- No comparative analysis: The memo does not examine whether other Michigan cities have similar ordinances or how courts have ruled on challenges elsewhere.
- Insufficient Home Rule analysis: Michigan Constitution Art. VII, § 22 grants Home Rule cities broad authority over "municipal concerns." Housing stability and displacement prevention are quintessentially local concerns.

II. The Legislative Intent Argument is Fundamentally Flawed

A. Misapplication of *Expressio Unius Canon*

The Law Department argues that because the legislature provided Just Cause protections for public housing tenants (MCL 600.5714(2)) and mobile home park residents (MCL 600.5714(3)) but not private tenants, it *intended to prohibit* municipalities from extending such protections to private tenants.

This reasoning commits the classic *expressio unius est exclusio alterius* fallacy ("expressing one thing excludes another"). However, this canon is among the weakest tools of statutory interpretation, particularly when alternative explanations are more plausible.

B. Alternative Explanations Are More Plausible

The special protections for public housing and mobile home parks are better explained by unique circumstances:

- Public housing: The government is the landlord. Constitutional due process concerns and public accountability justify heightened protections. This is not analogous to regulating private landlords.
- Mobile home parks: Residents own their homes but rent the land, creating unique vulnerability. Moving a mobile home is expensive and often impractical, giving park owners disproportionate leverage.

These provisions create a protective *floor* for especially vulnerable populations—not a *ceiling* preventing all other protections. The legislature addressed urgent problems it deemed most critical, leaving other matters to local determination consistent with Home Rule principles.

C. Michigan Precedent Rejects the Prohibition Theory

The Law Department's theory that state regulation *prohibits* supplementary local regulation was explicitly rejected in *Grand Rapids*:

The mere existence of a statute does not preempt local regulation of the same subject matter... Parallel subject matter simply does not require a finding of preemption. 455 Mich. at 270.

The Court emphasized that preemption requires either: (1) express statutory language, (2) clear legislative history, (3) pervasive state regulation (insufficient alone), or (4) need for uniformity. *Id.* at 268. None of these factors are present here.

D. No Evidence of Actual Legislative Intent

The opinion makes assertions about legislative intent without:

- Reviewing legislative history or committee reports
- Examining floor debate or sponsor statements
- Considering the temporal context (when were these provisions enacted?)
- Addressing whether tenant protection ordinances were contemplated when the RJA was drafted

Without this foundational research, the conclusion about legislative intent is pure speculation.

III. The Court Rule Argument Undermines the Opinion's Conclusion

The Law Department cites MCR 4.201(B)(3)(b), which requires complaints involving public housing to "contain specific reference to the rules or law establishing the basis for ending the tenancy." The opinion argues this differentiation shows courts have "deliberately chosen not to codify 'Just Cause' requirements for the termination of private tenants."

This argument actually *undermines* the preemption claim. The court rule's structure demonstrates that:

1. Courts can accommodate local regulations within eviction proceedings
2. The procedural framework is flexible enough to incorporate varying substantive standards
3. If Detroit enacted a Right to Renew ordinance, that ordinance would constitute "law establishing the basis for ending the tenancy" that landlords would cite in court

Rather than proving preemption, MCR 4.201 shows the court system is designed to incorporate local regulations into eviction proceedings.

IV. Internal Contradiction in the Relocation Assistance Proposal

The opinion's most damaging flaw is internal contradiction. After concluding the City cannot regulate "Just Cause" for lease non-renewal, the Law Department proposes Option 2 (Relocation Assistance), which states:

If a landlord does not make a good faith offer to renew a written lease for each tenant, the landlord shall pay relocation assistance to the aggrieved tenants, unless the landlord has 'good cause' to not offer renewal.

This provision is logically incompatible with the opinion's core reasoning:

- If the City cannot define when landlords must renew leases, how can it impose financial penalties for failing to "make a good faith offer"?
- If the City cannot establish "Just Cause" standards, how can it create exemptions based on "good cause"?
- If the field is occupied by state law, what authority permits the City to regulate non-renewal decisions at all?

The relocation assistance provision *necessarily regulates the substantive grounds for lease non-renewal*—precisely what the opinion claims is preempted. This contradiction suggests the Law Department itself does not fully credit its preemption analysis.

V. Controlling Michigan Precedent Supports Municipal Authority

A. The Grand Rapids Framework

In *Rental Property Owners Ass'n v. City of Grand Rapids*, 455 Mich. 246 (1997), the Michigan Supreme Court established critical principles for analyzing municipal ordinances:

1. Presumption of validity: "[O]rdinances exercising police powers are presumed to be constitutional, and the burden is on the challenger to prove otherwise." *Id.* at 261.
2. Narrow construction of preemption: "The mere existence of a statute does not preempt local regulation of the same subject matter." *Id.* at 270.
3. Parallel regulation permitted: "Parallel subject matter simply does not require a finding of preemption." *Id.*
4. Direct conflict test: "[T]he test is whether the ordinance prohibits an act which the statute permits, or permits an act which the statute prohibits." *Id.* at 271.

A Right to Renew ordinance would not prohibit what the RJA permits or permit what the RJA prohibits. The RJA allows eviction of tenants "holding over" after lease expiration—but says nothing about whether landlords must offer lease renewals or under what circumstances.

B. Home Rule Authority Under Michigan Law

The *Grand Rapids* Court emphasized the breadth of Home Rule powers: "The home rule cities act... is intended to give cities a large measure of home rule. It grants general rights and powers subject to enumerated restrictions." Id. at 261.

The Court further held: "It is well established that nuisance abatement, as a means to promote public health, safety, and welfare, is a valid goal of municipal police power." Id. at 262.

Housing stability, tenant displacement, and neighborhood preservation are equally valid exercises of police power under Home Rule authority. MCL 117.3(j) expressly authorizes cities to enact provisions for "the protection of the safety, health, morals, prosperity, comfort, convenience and welfare of the public."

C. Application to Right to Renew Ordinance

Under *Grand Rapids* and *Javens*, a Right to Renew ordinance would survive challenge because:

1. No direct conflict: The ordinance does not prohibit what state law permits or permit what state law prohibits. It regulates the landlord-tenant relationship pre-litigation, not judicial procedures.
2. Field not occupied: The state regulates eviction procedures, not lease renewal obligations. "Parallel subject matter" (housing) "does not require a finding of preemption."
3. Valid police power: Preventing displacement and promoting housing stability are legitimate exercises of municipal police power. See MCL 117.3(j).
4. Explicit statutory authorization: MCL 125.534(8) provides that housing laws do not "preempt, preclude, or interfere with the authority of a municipality to protect the health, safety, and general welfare of the public."

Conclusion

The Law Department's opinion reaches a conclusory determination of preemption that is contradicted by controlling Michigan Supreme Court precedent. In *Rental Property Owners Ass'n v. City of Grand Rapids*, 455 Mich. 246, 270 (1997), the Court explicitly held that "the mere existence of a statute does not preempt local regulation of the same subject matter" and that "parallel subject matter simply does not require a finding of preemption." The Court of Appeals in *Javens v. Ruel McPherson*, 1996 Mich. App. LEXIS 1695 (1996), held that housing regulations do not impermissibly interfere with district court jurisdiction, and that MCL 125.534(8) expressly preserves municipal authority to protect public health and safety through housing ordinances.

The Law Department's analysis suffers from multiple deficiencies:

1. Overstated field preemption: The state regulates eviction procedures, not substantive landlord-tenant obligations before litigation. Michigan courts consistently hold that parallel regulation is permissible.
2. Misapplied legislative intent: The *expressio unius* argument is legally weak and unsupported by evidence. Special protections for public housing and mobile homes reflect unique circumstances, not intent to prohibit all other protections.
3. Internal contradiction: The proposed relocation assistance provision regulates non-renewal grounds—undermining the claim that this field is preempted.
4. Ignored controlling precedent: The opinion fails to address *Grand Rapids* and *Javens*, which directly support municipal authority to enact supplementary housing protections.

It is our opinion that a well-drafted Right to Renew ordinance, carefully framed to supplement rather than conflict with state eviction procedures, would likely withstand challenge under Michigan law. The ordinance should be grounded in Detroit's Home Rule authority (Mich. Const. Art. VII, § 22), police powers (MCL 117.3(j)), and express statutory authorization (MCL 125.534(8)), with comprehensive findings documenting local housing conditions and displacement impacts.

Supporters of the proposed ordinance should not accept the Law Department's conclusory determination without demanding more rigorous legal analysis. We recommend requiring the Law Department to address the precedent and analytical weaknesses identified in this memorandum before the Council abandons its policy objective based on a questionable preemption analysis.

Respectfully submitted,

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